IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 33195 of 2007(B)

(ORDER IN IA NO. 3846/2007 IN OS NO. 685/2007 ON THE FILE OF THE PRINCIPAL SUB COURT, THRISSUR)

PETITIONER:

JITHESH, S/O.PUSHKARAN, THAYYIL HOUSE, KANIMANGALAM P.O., KANIMANGALAM VILLAGE, PANAMUCK DESOM, THRISSUR DISTRICT.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

A.V.ANAND, S/O.SURYAGANAKARAN, AVANAMVEETTIL DESOM/VILLAGE, THRISSUR TALUK/DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No. 33195 OF 2007

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Dated this the 12th day of November 2007

JUDGMENT

This writ petition is preferred against the order of the Prl.Sub Judge, Thrissur in I.A.No.3846 of 2007 in O.S.No.685 of 2007. The suit is one for return of advance money as well as for compensation alleged to be committed by the defendant on account of the breach of contract. The plaintiff claims an amount of Rs.1,50,000/- in the suit. Along with the suit, the plaintiff moved an application for attachment of the property. Learned counsel for the petitioner submits that he has filed a counter and he has exhibited here also as Ext.P5. But, unfortunately the court has not considered any of those aspects and passed an order, as if it is passing an ex parte order of conditional attachment. The said approach is erroneous. If a counter statement is filed and the matter is disputed, the court has to consider the case of both parties and passed appropriate orders.

Therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration. The learned Sub Judge is directed to hear both sides afresh and dispose of the matter in

accordance with law. Learned counsel for the petitioner would contend that since the advance amount is only Rs.1 lakh, the court shall limit the furnishing of security to Rs.1 lakh and according to the learned counsel breach is committed by the plaintiff in the suit. These are all matters which the court below can consider and pass appropriate orders. the petitioner shall appear before the court below on 26.11.2007 and on that day the court shall fix a date of appearance for the plaintiff in the suit and then dispose of the matter within one month from that date.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-